

THE ART OF OFFSHORE: TAX AVOIDANCE AND UNSEEN ARTWORKS IN THE NEW LUXURY FREEPORTS

COFFERS D4.7
APRIL 2019

Oddný Helgadóttir
Department of Organization
Copenhagen Business School



COFFERS
EU Horizon 2020 Project



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727145.

Abstract

This paper introduces the concept of a Luxury Freeport to describe a novel form of offshore where art and other high-end goods can be stored indefinitely without tax and duty-payments being made. The paper makes three key contributions to our understanding of these new actors in the global political economy. First, drawing on an interdisciplinary mix of perspectives from political economy and economic geography, the paper conceptualizes Luxury Freeports as part of what has been called the ‘offshore world’. It shows that over the course of the last decade these previously understudied sites have become part of an evolving global ecosystem of tax avoidance that they have helped push to new frontiers, notably by permitting trade in high value goods without the payment of value-added or capital gains tax. Second, the paper attributes the rise of this new form of offshore to meso-level spillover effects within the offshore world itself: this new model of offshore was born from a combination of the competitive ‘push’ of the rapid spread of Open Customs Warehouses at the turn of the century and the investment ‘pull’ of large pools of money needing new investment outlets in the wake of the recent multilateral effort to clamp down on banking secrecy. Third, it examines how the development and diffusion of the Luxury Freeport model has been shaped and constrained by this international clampdown. Navigating the regulatory push against offshore and in an effort to mainstream and legitimize their activities, newer Luxury Freeports have explicitly aligned themselves both with the exclusive and high cultural capital environment of the art world and the ecosystem of specialized services offered by the wealth management industry, while also relying on government support or sponsorship.

Introduction

In a handful of specialized storage sites dotting the globe, a strange thing has been happening: art and other objects traditionally prized for their beauty are being kept in sealed crates and hidden away behind lock and key indefinitely. In many cases they see the light of day only if they are about to change hands. After they change hands, they may simply be returned to the store where they were previously held. Why are people paying to keep art where no one can see it?

Economists have long considered art a risky investment and a poor store of value. For much of the twentieth century collectors behaved accordingly, purchasing art primarily for the innate pleasure and social prestige it offered. Over the past few decades, however, the nature of the art trade has been changing: the high-end of the art market has been in an almost relentless boom since the 1980s and even the Global Financial Crisis (GFC) of 2008 only registered as a brief blip in the art world (Zarobell 2017; Adam 2014, 2017). In this environment, art has gradually been evolving into an investment asset in its own right.¹

However, buying art has not just become more attractive because of rising prices at the high end of the market. Rather, as collecting art has taken on some of the characteristics of more traditional investment, an infrastructure enabling tax evasion has also risen up around its trade.² At the heart of this development are new-fangled storage sites that this paper refers to as Luxury Freeports. The paper has three main aims: (1) to conceptualize Luxury Freeports as part of the international political economy of what has been called the ‘offshore world’ (Palan 2003),³ (2) to explain how the Luxury Freeport model first emerged and (3) to examine how the development and diffusion of this model has been shaped and constrained by the need to navigate the regulatory challenges associated with an international clampdown on tax havens and secrecy practices.

Firstly, in conceptualizing Luxury Freeports, the paper makes a distinction between these new actors in the international political economy and the traditional freeports that are their historical predecessors. Traditional freeports have a long history and primarily serve as temporary tax- and duty-free storage for commercial goods in transit. As such they have comparatively rapid stock turnover and can be key to the operations of Global Value Chains (GVCs). Luxury Freeports, by contrast, are specifically equipped long-term storages spaces where, by virtue of special legal exemptions, art and other luxury goods can be traded and kept for unlimited periods of time without tax - and duty-payments (Adam 2017; Zarobell 2017; Segal 2012). The paper argues that in playing this new role, Luxury Freeports have emerged as new players in a complex, integrated and ever-evolving global ecosystem of tax evasion taking place in specially designated regulatory spaces (Palan 1998; Palan et al. 2010).

1 Unlike, say, equities or commercial real estate, art doesn’t have an underlying income stream to recommend it as a form of investment. Even so, the post-crisis confluence of low yields on a number of traditional assets and a growing pool of high net worth individuals competing to buy the work of so-called ‘blue chip artists’ have contributed to the growth and allure of art investment (Helgadóttir forthcoming; Goetzmann, Renneboog and Spaenjers 2011; Schrager 2015; Gapper 2014. For a sociological perspective on art prices see Velthuis 2007.)

2 While much of the literature on taxation distinguishes between tax evasion and tax avoidance, treating the former as illegal and the latter as legal, if not in accordance with the spirit of the law, the distinction is not always clear in practice (e.g. Maurer 2008). Moreover, as Manuel Aalbers has noted, ‘[t]he language of tax avoidance naturalizes the practice and suggests that if you are smart enough, you do not need to pay taxes. Whether one follows the origination or receiving principle, a great deal of so-called ‘legal’ tax avoidance could be considered illegal (2018 p. 918).’ In a similar vein, former British chancellor Dennis Healey gave a neat definition of where the dividing line lies when he argued that, ‘[t]he difference between tax avoidance and tax evasion is the thickness of a prison wall (Shaxon 2011 p. 25). Following this line of reasoning, this paper will use the terms tax evasion and tax avoidance interchangeably.

3 I use the terms offshore and tax haven interchangeably. See Sharman 2012 for a discussion of the various terms used in the scholarly literature and their specific applications.

This matters in particular because for well-heeled customers, Luxury Freeports are pushing tax avoidance to new frontiers: they make it possible to trade high-end goods such as art without payment of value-added tax (VAT), which ranges from five to fifteen percent in many countries.⁴ VAT is a form of indirect consumption tax that is favored by many economists precisely because for the average consumer it is easy to collect reliably (Genschel and Schwarz 2011; Schenk et al. 2015). Crucially, however, the assets kept in Luxury Freeports—most notably art—are unique in that they are not only a reflection of economic wealth but also a manifestation of social power that grants select actors exclusive access to certain high-end goods. The study of Luxury Freeports therefore also stands to deepen our understanding of the exclusive and exclusionary nature of offshore services.

Secondly, in trying to understand the emergence of the Luxury Freeport model this paper sheds light on how a decentralized and largely unregulated system of wealth accumulation and protection snowballs, generating its own internal momentum and endogenous evolutionary incentives where both competition and symbiosis play a role. Endogenous dynamics and spillover effects between different kinds of offshores are therefore key to understanding the present day evolution of the global nebula of tax havens.⁵ Thus, the rise of Luxury Freeports in Switzerland was spurred both by the competitive ‘push’ of Open Customs Warehouses (OCW) established from the mid-1990s onwards as part of World Trade Organization (WTO) regulatory changes and the ‘pull’ of traditional financial offshores requiring novel investment outlets, particularly in the aftermath of the GFC and as a result an international push against banking secrecy. There seems, in other words, to be an internal momentum to the growth and development of the offshore world, shaped by a mixture of competition and cooperation between different entities. This approach draws on the kind of system-level macroprudential thinking that has become prevalent in the aftermath of the GFC in that it treats the offshore world as an interconnected whole, rather than a collection of entities that can be individually analyzed.⁶

Finally, the paper makes the case that the diffusion and development of this new kind of offshore has been marked by the need to navigate the regulatory challenges associated with an international push against offshores and secrecy practices. Facing regulatory crackdowns, a new generation of Luxury Freeports has actively exploited the special nature of the assets they store, capitalizing both on the halo-effect of the high-end art world and the expertise of the wealth management industry as core parts of their business model. Bill Maurer’s argument that further progress in the social study of finance depends on a better appreciation of hierarchies of regard and esteem is therefore especially pertinent in the analysis of this new kind of culturally embedded offshore (2008 p. 176 cited in Sharman 2010). Thus, while new Luxury Freeports have

emerged alongside established financial hubs and/or tax havens, this has by no means been an automatic process in which freeports spontaneously appear where there is a concentration of private wealth. Rather, the spread of Luxury Freeports has been network-driven and strategically embedded in cultural systems of meaning and prestige. To date this strategy has been largely successful and recent regulatory changes do not threaten the core elements of Luxury Freeports’ business model.

These arguments are part of a broader story of the relationship between global wealth and tax dodging. In the face of increasing capital mobility and the rise of offshore activity in the post-1970s, ease of collection was a key rationale underpinning the turn away from progressive equity-oriented taxation (e.g. personal income taxes; corporate taxes) and toward more regressive efficiency-oriented taxation (e.g. consumption taxes, including VAT; payroll taxes) (Wilensky 2002; Kato 2003; Swank and Steinmo 2002). But in Luxury Freeports even the presumed workhorse of VAT can now be added to the list of taxes that high net worth individuals (HNWIs) can already circumvent (e.g. capital tax, income tax, inheritance tax and, where applicable, wealth tax) (Zucman 2015).

This paper proceeds in four parts. First it revisits some of the pertinent literature, linking contributions from the international political economy (IPE) literature on offshores to insights from economic geography. Leveraging a combination of process tracing and semi-structured interviews, it then moves on to two empirical sections, the first centered on the emergence of Luxury Freeports and the second on the diffusion and reification of this new model of offshore. The first empirical section hones in on the case of the Geneva Freeport. Originally a traditional freeport, the Geneva Freeport was the first to reinvent itself as a haven for art and luxury goods specifically. Focusing on the Geneva Freeport reveals that while there has been some political willingness and demonstrated institutional capacity to regulate freeport activity, the regulatory drive has been reactive and geared exclusively towards activities that are unequivocally illegal (smuggling and trade of illegally sourced art; money laundering; terrorist financing). By contrast, there has been little political appetite for considering Luxury Freeports as new platforms for tax avoidance.

Another empirical section takes a closer look at Le Freeport in Luxembourg as an exemplar of the new generation of Luxury Freeports. Navigating the regulatory push against offshores and in an effort to mainstream and legitimize their activities, newer Luxury Freeports have explicitly aligned themselves both with the exclusive and high cultural capital environment of the art world and the ecosystem of specialized services offered by the wealth management industry. While unabashedly touting the tax benefits they offer as part and parcel of high-end services at the nexus between culture and wealth planning, they have also emphati-

4 VAT is chargeable on the sale of artwork by a dealer who is registered as a trader, but not by an individual who is trading it as part of a private collection. However, there is a significant VAT cost to trading art, because VAT can be charged on the supply professional services to those participating in this activity, even if in a private, non-trading, capacity.

5 For a different take on spillover effects between offshores see Christensen et al. 2016.

6 For more on the macroprudential shift see Baker 2013.

cally embraced new regulation to counter money laundering and smuggling. This framing assumes a clear bifurcation between tax avoidance and money laundering, with the former as a natural part of international financial activity and the latter as beyond the pale.⁷ Meanwhile, however, the interconnections between tax dodging on the one hand and money laundering on the other are increasingly acknowledged by a plethora of regulatory actors—a development that could threaten the Luxury Freeport model. A fourth and final section concludes.

Theoretical framework

We do not have even a ballpark estimate of the value of goods stored in Luxury Freeports.⁸ One New York Times article on the Geneva Freeport, a trailblazer in the Luxury Freeport business, reports that art dealers and insurers believe that the art housed in that facility alone would suffice ‘to create one of the world’s great museums’. In a similar vein, a London-based insurer states that there isn’t ‘a piece of paper wide enough to write down all the zeros’ needed to capture the value of the riches kept in Geneva (Segal 2012). While evocative, such claims are both vague and impossible to test. In light of the lack of data and the intrinsically secretive nature of Luxury Freeports, this paper will not attempt to estimate the value of objects kept in these storage arrangements.

Still, a number of factors beyond the purely anecdotal suggest that the stock of private wealth kept in luxury offshore is both substantial and growing. One indication of this is the growing value of the high-end art market. Deloitte estimates that US\$1.62 trillion of HNWI wealth was allocated to art and collectibles in 2016 and projects that this figure will reach US\$2.7 trillion by 2026 (Deloitte Art & Finance report 2017).⁹ The rapid diffusion of the Luxury Freeport model itself also suggests that there is strong demand for the services that these sites provide. In 2010, there were 46,722 square meters of dedicated art storage in Luxury Freeports compared to over 178,800 square meters today.¹⁰ All in all, then, the value of non-financial private wealth kept in Luxury Freeports may add significantly to the \$7.6 trillion that economist Gabriel Zucman estimates is kept in financial offshore (Zucman 2015).¹¹

But Luxury Freeports should also be of interest to social scientists for reasons that go beyond the price tag we attach to them. As political economist Jason Sharman has noted, the study of off-

shores can provide ‘new insights into existing and emerging issues at the heart of International Political Economy (Sharman 2010 p. 2).’ And, indeed, a number of scholars have leveraged the unique characteristics of offshore for analytical traction in thinking about the ‘big structures, large processes and huge comparisons’ of the global economy.¹² This paper follows in this tradition and makes the case that a close examination of Luxury Freeports stands to both supplement and challenge the state of the art in the offshore literature.

It is easy to understand why states might choose to act as tax havens: offering tax privileges to non-residents stands to attract new sources of revenue while losses, in the form of foregone tax income, are primarily borne by other countries. It is a classic encapsulation of free rider logic. Yet, if we examine the historical record, this kind of strategic reasoning does not seem to account for the rise of the offshore world. Rather, as an early wave of offshore literature has demonstrated, the emergence of tax havens was an unintended consequence of system-level characteristics and contradictions (Palan 1998, 2003; Palan et al. 2010; Picciotto 1992, 1999).

Thus, Ronen Palan traces the rise of offshore back to the nineteenth century, when the tension between the increasingly robust system of juridically discrete sovereign states and global capital mobility necessitated the invention of offshore as extra-territorial spaces of maneuver (Palan 1998; 2003). Offering a similar analysis, albeit from the perspective of international law, Sol Picciotto sees the concept of the offshore as a malleable ‘legal fiction’ that was bound to emerge as the mirror image of the legal fiction of ‘the state’ as an objective and geographically bounded entity. The intrinsically plastic nature of these abstract constructs lent itself to the kind of legal and fiscal maneuverings that are carried out in offshore jurisdictions (Picciotto 1992; 1999).

Early offshore, then, did not emerge fully formed from the head of Zeus. Instead, the discovery of novel forms of tax evasion has most often been both piecemeal and haphazard. As a rule, more instrumental pursuit of offshore status begins only once initially disparate and fumbling practices have clicked together into coherent new forms of evasion. Such strategic behavior often happens through emulation, with new actors entering the fray after observing the success of early movers and innovators (Picciotto 1992;

7 See Tsingou 2010 for the complex origins of the international AML regime. See Roth 2015 for money laundering in the art trade.

8 Though it should be noted that several news sources mention the sum of CHF100 billion when discussing the Geneva Freeport, but the origins and basis of that figure are unclear.

9 Since the bulk of art transactions are not publicly reported, any estimate of the overall value of the art market should be taken with a grain of salt. Nevertheless the growth trend is apparent. Clare McAndrew, until recently an economist for the European Fine Art Fair, estimates that the total level of art market transactions in 2017 was close to \$64bn (McAndrew 2017). Economist Nouriel Roubini believes that the number is higher yet, and estimates market capitalisation of \$1tn (Roubini 2015).

10 McAndrew has surveyed both dealers and collectors and estimates that private unreported sales account for about 70% of all art transactions. It is likely that some of these unreported sales take place in the showrooms of Luxury Freeports, where they are exempt from taxes and duties.

11 For other higher estimates—some of them much higher—see e.g. Henry 2012; Palan et al. 2010; Christensen and Murphy 2012

12 E.g. Sharman 2006, 2010, 2012; Palan 1998, 2003; Picciotto 1999.

Palan 2003; Palan et al. 2010; Shaxson 2011). Palan has broken this down into an explicit four-step process, the stages of which are (1) the pragmatic resolution of the contradictions between positivist law and capital mobility, (2) further innovation, (3) competitive emulation and, finally, (4) a race to the bottom (Palan 1998).

To date, Luxury Freeports have largely passed under the radar of academic research and they represent an important knowledge gap in the scholarship on offshore activity. In his state of the art on offshores, *The Hidden Wealth of Nations*, Gabriel Zucman makes this point explicitly, noting that most current estimates of offshore wealth do not extend to nonfinancial wealth kept in tax havens:

This includes yachts registered in the Cayman Islands, as well as works of art, jewelry, and gold stashed in freeports—warehouses that serve as repositories for valuables. Geneva, Luxembourg, and Singapore all have one: in these places, great paintings can be kept and traded tax-free—no customs duty or value-added tax is owed—and anonymously, without ever seeing the light of day (Zucman 2015 p. 44-45).

At first glance the emergence of Luxury Freeports seems to fit the established analysis of the trajectory of tax havens quite well: this form of offshore originated through a process of experimentation in Geneva, Switzerland and then spread to other parts of the world where it has been pursued in a more strategic fashion. Yet, the rise of Luxury Freeports also diverges from this model in ways that merit further discussion. Crucially, established accounts of the rise of the offshore world are ‘creation myths’ in that they describe offshores as spatio-juridical innovations without parallel or precedent, emerging in response to tectonic shifts in the global political economy.¹³

The rise of Luxury Freeports, by contrast, is an evolutionary tale. Luxury Freeports did not appear in response to entrenched contradictions, nor do they speak to fundamental underlying transformations of the international political economy. Rather, they shed light on how a decentralized and largely unregulated system of wealth accumulation and protection snowballs, generating its own internal momentum and endogenous evolutionary incentives where both competition and symbiosis play a role. Framing the rise of Luxury Freeports in these terms is not so much a challenge to the earlier offshore literature as it is a natural complement and continuation of it, applying its empirical and historically grounded method to contemporary meso-level developments in the offshore world.

Crucially, shifting our attention away from the ‘Big Bang’ of emergence to ongoing and internal sources of evolution in the offshore world opens up new kinds of research questions. More specifically, thinking about the interaction between different kinds of offshores focuses our attention on temporal and spatial questions: What explains the timing of the emergence of Luxury Freeports? What explains their location and patterns of diffusion? Approaching the topic in this way also opens up the opportunity to learn from scholars that have asked similar questions.

Notably, economic geographers have examined how the spatial arrangements of global finance evolve over time, bringing together new actors in novel relations (e.g. French, Layshon and Wainwright 2011; Pike and Pollard 2010; Zaloom 2006; Lo and Grote 2003; Allen and Cochrane 2007; Gilbert 2006; Amin 2004; Hudson 2007). Much of this literature also highlights how the interplay between competition and cooperation shapes financial and economic geographies (Wójcik 2013; Faulconbridge 2004; Beaverstock et al. 2005) and the extent to which markets are geographically embedded institutions that emerge at least in part as a function of pre-existing knowledge and information (Muellerleile 2013; Wójcik 2007, 2009). Early work along these lines sometimes overlapped with the field of urban studies (e.g. Friedman 1986; Sassen 1991), while more recent scholarship has honed in on the role of the ‘network society’, characterized by the flow of capital, culture, information and goods in determining the rise of financial and economics centers (Castells 1996; Wójcik 2018; Haberly and Wójcik 2016; French, Layshon and Wainwright 2011; Beaverstock et al. 2005, 2007, 2018; Hall 2012; Pollard 2007; Seabrooke and Henriksen 2017). Offshores, like other hubs of financial activity are subject to dynamics of this kind and the constitutive role of competition and cooperation, cultural embeddedness and the role of networks are all theoretical focal points that are adopted in the empirical sections that follow.

This paper also builds and sets out to deepen our understanding of the exclusive and exclusionary nature of offshore services. It is well known that tax havens cater primarily to wealthy individuals (Seabrooke and Wigan 2017; Beaverstock et al. 2012; Harrington 2016), a reality that appears to be growing more pronounced as banking secrecy comes under international pressure (Zucman 2015; Deloitte Art and Finance Report 2017). High costs of entry and limited access to the requisite experts, expertise¹⁴ and networks are all decisive factors in this. What is more, a number of scholars have demonstrated that issues of identity, image and social prestige play a role in the construction of and access to offshores that is not captured by purely rational perspectives (Maurer 2000, 2008; Rawlings 2005; Hudson 1998; Cobb 1999, 2001). The study of Luxury Freeports stands to add to our understanding

13 This focus, it should be noted, was a deliberate and informed choice of this wave of scholarship. For example, Palan stresses the ‘important distinction between the origins of the modern tax havens strategy and the later diffusion and growth of the phenomenon’ but also concludes that though ‘its development is naturally of great interest to financial regulators, its origins are what international relations scholars find interesting, not least because of the importance attached to a system of states, particularly a system of sovereign states that appears to have encouraged the experimentation and innovation in state laws that produced the tax havens strategy (2002 p. 162).’ By contrast, this paper frames the growth and diffusion as no less interesting for social scientists.

14 See Eyal 2013 on distinguishing between experts and expertise.

of such dynamics of ‘Weberian stratification’ in that the wares they contain are manifestations not just of economic wealth but also of social power that grants monopolistic access to certain economic goods. This is a fact that is being actively exploited by a new generation of Luxury Freeports, which have enlisted both the aesthetics and expertise of the exclusive high-end art world as a core part of their business model.

The Endogenous rise of Luxury Freeports

The competitive ‘push’ of Open Customs Warehouses

Freeports have a long tradition in Swiss history. The Geneva Freeport—now officially Ports Francs et Entrêpôts de Genève SA—was founded in 1888. Historically, Swiss freeports acted as tax- and duty-free storage spaces for grain, alcohol, tobacco and other goods in transit. Even as the Swiss economy modernized they continued to serve much the same function and in 1970 there were approximately forty freeports in Switzerland (Swiss Federal Audit Office 2014). The Geneva Freeport, however, was unusual in that by that

point it had already begun cultivating a specialization in storing all manner of luxury goods (Jaccard and Guex 2011). This specialization was stimulated by Geneva’s market niche as a purveyor of art and luxury objects. In many cases, goods of this kind were stored for very long periods of time, even as they were technically treated as ‘in transit.’ Tax exemptions therefore applied, even when goods were deposited for decades and traded hands numerous times in transactions that normally would incur VAT.

The late 1990s marked a turning point for the Swiss freeport model in general and the Geneva Freeport in particular. Alongside the founding of the WTO in 1995, Open Customs Warehouses, a new kind of tax- and duty-free storage option, were promoted with the aim of facilitating free trade and harmonizing trade practices across borders. OCWs quickly spread all over Europe, including Switzerland, exerting competitive pressures on the traditional freeport model (FATF/OECD 2010; Swiss Federal Audit Office 2014; author’s interviews).

	Open Customs Warehouses	Freeports
Licensing requirements	<p>Standardized and thorough. Application forms are available online.</p> <p>Licenses are granted for five years.</p> <p>Customs is responsible for ensuring that requirements on inventories, accounting and guarantees and official procedures are met.</p> <p>Licenses can be revoked if OCWs fail to meet a defined set of criteria (though this does not always happen in practice).</p>	<p>Discretionary.</p> <p>Licenses granted without a time limit.</p> <p>Customs is responsible for ensuring formal compliance only when goods enter and exit the premises.</p> <p>Conditions that might lead to a license being revoked are not specified.</p>
Inventory requirements	<p>Yes, for all stock.</p>	<p>None until changes to Swiss Customs Law took force in 2007.</p> <p>Under current legislation only stock defined as ‘sensitive’ must be inventoried. This includes i.e. art, alcohol, tobacco, weapons, medical supplies, military wares and precious metals and stones.</p> <p>Inventory requirements are not retroactive.</p>

Goods can change hands?	<p>No.</p> <p>Exhibition and sale of goods is expressly forbidden. Goods can be repackaged but only with permits from an appropriate licensing body. (i.e. Swis-smedic if medication is to be repackaged).</p>	<p>Yes. Payment of taxes and duties is suspended for deals carried out on free port premises.</p> <p>The Geneva Freeport is equipped with showrooms where deals can be made. It also offers a range of other services including gallery facilities, restoration and expert valuation.</p>
Access	<p>Only OCW staff is permitted on premises.</p> <p>All stock is kept in the name of the warehouse keeper even if it actually belongs to a third party.</p>	<p>Clients and service providers can enter during office hours.</p> <p>Spaces can be let out to tenants. This is reflected in storage structure, which consists of discrete and anonymous storage spaces.</p>
Legal liability	<p>Warehouse keeper is responsible for meeting all laws and standards.</p>	<p>Legal liability is shared between warehouse keeper and tenants.</p> <p>The warehouse keeper has a legal responsibility to draw a tenant's attention to applicable laws and regulations but is not responsible for the tenant's compliance.</p> <p>Tenants are not required to provide information or insurance guarantees to Customs.</p>
Customs presence	<p>No regular presence but the possibility of irregular checks.</p>	<p>An on-site customs office is a licensing requirement.</p>

There are several important differences between Swiss freeports and OCWs that gave the latter a competitive edge. One crucial difference is that in order to be licensed, freeports had to operate alongside Swiss Customs offices and were bound by Customs' official opening hours. This requirement stemmed from the fact that legally speaking freeports were, until Swiss customs law was changed in 2005,¹⁵ extraterritorial and therefore treated as foreign soil. OCWs, by contrast, were never legally extraterritorial. On-site customs offices were therefore not a requirement and OCWs could operate on flexible schedules that were well suited to the needs of modern freight and haulage.

The price of this flexibility was that in a number of other respects

the standardized Swiss licensing practices for OCWs were more stringent than those for freeports. Still, the process for opening up a new OCW was standardized and transparent enough not hamper the diffusion of this new duty-free storage model. Indeed, the fact that for OCWs the process was harmonized, if demanding, may have contributed to the spread of OCWs over freeports, for which the requirements for opening up a new facility were more lenient but also less transparent, not standardized and largely discretionary.

OCWs also had the late-mover advantage of being built and located to suit the technological requirements of the modern freight and logistics. By the late 1990s and early 2000s they began spread-

15 The change took effect in 2007.

ing rapidly and there are now around 250 OCWs in Switzerland, many of them clustered near logistical and transit hubs such as ‘fashion valley’ in the Canton of Ticino. As OCWs took off, freeports found themselves in commensurate decline. The one notable exception was the Geneva Freeport (Loi sur les douanes 2005; Swiss Federal Audit Office 2014; author’s interviews).

It was in the new environment of heightened competition in the late 1990s and early 2000s that the Geneva Freeport was reinvented as a Luxury Freeport. With an 87% stake in the freeport, the Canton of Geneva is its majority shareholder, but the vision for its overhaul came from international art dealer Yves Bouvier. Sometimes nicknamed the ‘freeport king’ for his role in establishing and spreading the Luxury Freeport model, Bouvier owned 7% of the Geneva Freeport and the arts services and logistics company that he owned, Natural Le Coultre, rented almost a quarter of its space for its commercial pursuits (Swiss Federal Audit Office; Report on inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)).

The makeover of the Geneva Freeport drew on Bouvier’s experience as a dealer in high-end art and capitalized on the freeport’s established reputation as a depot for luxury goods. But it also leveraged the differences between freeports and OCWs, in some cases turning freeports’ competitive weaknesses into strengths. For the purpose of storing luxury goods for long periods of time, for example, the on-site presence of Swiss Customs is not an impediment but a selling point, contributing to the security of storage sites without adding costs to be passed down to customers.

Other differences between freeports and OCWs also favored this new niche role in luxury services. The most important distinction between the two is that goods can change hands in freeports but not in OCWs. Capitalizing on this, the Geneva Freeport has been equipped with showrooms and offers a range of services explicitly supporting the tax-free trade of art.

What is more, until 2005 Swiss freeports, unlike OCWs, were not required to keep inventories. Even now they are only required to keep limited inventories and inventory requirements are not

retroactive. Moreover, while OCW operators are legally liable for all goods stored in their warehouses, in freeports responsibility is shared between warehouse operators and tenants. The warehouse keeper has a legal responsibility to draw a tenant’s attention to pertinent laws and regulations but cannot be held accountable if customers renting freeport space fail to comply with them. Since the stock of goods is rarely cross-checked against inventories, failure to comply is difficult to detect in practice. Or, as one specialist interviewed for this paper put it: ‘what is not controlled, does not exist (author’s interview).’

Swiss freeports, then, may not be as well adapted to the fast-paced world of haulage and logistics as OCWs, but they can facilitate tax- and duty-free trade in luxury goods while also providing a good measure of secrecy and anonymity.¹⁶ Specializing in these kinds of services has proven highly profitable for the Geneva Freeport, particularly while it retained its early-mover advantage, providing a unique range of services in a global environment of low yields on traditional financial assets.¹⁷

The investment ‘pull’ of funds fleeing a regulatory clampdown

In 2014 the Geneva Freeport expanded, adding 10,000 square meters to its pre-existing 46,722 square meters of storage space. It is estimated that over a million artworks are stored in the freeport. For comparison, the Modern Museum of Art (MOMA) in New York City owns about 200,000 works of art.¹⁸ While there are no reliable estimates of the value of goods kept in the Geneva Freeport, a recent report from the Swiss Federal Audit Office (SFAO) concludes that there has been ‘a huge increase in value since 2007.’ The SFAO attributes this to a combination of an increase in volume and valuation effects, including booming art prices (Swiss Federal Audit Office 2014)

Given the secrecy with which freeports operate, a ‘smoking gun,’ establishing a systemic link between financial wealth in Switzerland and the growth of the Geneva Freeport is unlikely to appear.¹⁹ Thinking in terms of a ‘hoop test,’ however, shows that the necessary, if not sufficient conditions for such a link are in place (Mahoney 2012; Van Evera 1997). In recent years we have witnessed

16 Following the 2014 publication of a federal report on freeports and OCWs, the Swiss Parliament harmonized legislation governing the two kinds of storage sites. By that point, however, the bifurcation of roles had already been established. Though there is now some overlap, with certain OCWs acting much like Luxury Freeports, path dependencies remain (author’s interviews)

17 Between 2004 and 2009 the annual rate of return after investment was reportedly 115% (https://www.bilan.ch/finance/l_eldorado_se_trouve_souvent_juste_a_cote_de_chez_vous)

18 <https://www.connaissancedesarts.com/marche-de-lart/dans-le-secret-des-ports-francs-11136/>.

19 Still, A Deloitte Luxembourg pamphlet on the Le Freeport in Luxembourg comes quite close, stating that, ‘[t]he traditional Ultra High-Net-Worth Individuals (UHNWI) are now asking for a higher level of personalization and customized products and services. Standardized offerings are no longer sufficient to satisfy sophisticated client demands that go beyond investment portfolio management. In such a context, Le Freeport Luxembourg can clearly offer Luxembourg and foreign financial institutions the opportunity to develop a group competence center on value goods in Luxembourg. Financial players based in Luxembourg can indeed leverage the unique ecosystem of Le Freeport to become the center of excellence for value goods, not only to serve their own clients but also those of other entities of the group they belong to, located abroad. David Arendt [CEO of Le Freeport] confirms the interest from the financial sector: “Wealth managers are very interested in Le Freeport. We constantly have visits from bankers and Professionals of the Financial Sector (PFS), and they often bring their clients. Then, it is up to our licensed operators to turn these visits into concrete business.” <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-le-freeport-luxembourg-new-perspectives-01062015.pdf>.

concerted multilateral efforts to crack down on offshores and the secrecy practices that sustain them. However, in spite of such measures money continues to pour into Switzerland and other secrecy jurisdictions (Zucman 2013, 2015; Sharman 2012). Zucman (2015) concludes that in early 2015 foreign wealth held in Switzerland reached \$2.3 trillion, an 18% increase from 2009, when the G20 proclaimed that new practices would lead to the 'end of banking secrecy.'²⁰

Simultaneously, demand for the services of Luxury Freeports has been growing quickly. In other words, the Geneva Freeport has flourished in tandem with the combination of an international drive against banking secrecy and growing inflows of funds into Switzerland.²¹ It may, in fact, be one of the mechanisms allowing the co-occurrence of these seemingly conflicting trends. Or, to put it differently, some of that value has likely found its way into the freeport. Lending support to this conclusion, we also know that as some of the established means of tax evasion have been closed off or made more expensive to pursue a range of luxury goods, including the kind that are the bread and butter of Luxury Freeports, have risen in value as a result of greater demand.

Putting together these fragments it is easy to conclude, as does the SFAO, that a key function of Luxury Freeports 'is the management of private or institutional assets and tax optimization for extremely valuable merchandise (artworks, precious metals), which is not in line with the main function of customs warehouses, or the spirit of the law.'²² A recent report commissioned by the European Parliament comes to a similar conclusion, highlighting the role of new regulation in spurring the uptick in investment in tangible assets and, by extension, the growing use of freeports. More specifically, the report finds that:

...growing demand for free ports has been attributed in part to the increasing crackdown by governments on bank secrecy and tax evasion. The introduction of the Foreign Account Tax Compliance Act (FATCA) in the USA (2010) and the commitment of OECD members to the OECD's 2014 Common Reporting Standards (CRS) – in the EU transposed via the Directive on Administrative Cooperation (DAC) – make it hard for individuals to escape taxation on proceeds of funds held in bank accounts. High net worth individuals have started looking for alternatives and many have substituted their 'bank account money' with replacement goods such as art, diamonds, antiques, wine or bank notes (EPRS 2018, p. 13-14).

The pattern of diffusion of Luxury Freeports also supports the conclusion that they have grown as a function of investors' desire for substitute or supplemental ways to evade taxes as more established financial methods become more difficult to pursue. Thus, over the course of the last few years new Luxury Freeports have emerged alongside known financial hubs and/or tax havens such as Singapore (2010), Monaco (2013), Luxembourg (2014), Beijing (2014), Delaware (2014) and New York City (2018).

Crucially, however, this pattern of diffusion has not been a mechanistic process, with Luxury Freeports spontaneously appearing where there is a high concentration of wealth. Rather, the spread of Luxury Freeports has been network-based and strategically embedded in systems of expertise and hierarchies of cultural prestige and status. Over the last few years, as the Geneva Freeport has been caught on its back foot for a range of reasons discussed below, a new cohort of Luxury Freeports has actively tried to avoid some of the pitfalls of the Genovese experience. This has involved embracing both the high-end aesthetics of the art world and the stewardship of the wealth management industry while also staying ahead of new regulatory measures. It is to this process that the next section of the paper turns.

The strategic spread of Luxury Freeports

Trouble in Geneva

The previous section argued that in the face of heightened competition within its sector, the Geneva Freeport reinvented itself as a novel form of offshore. While this strategy has proven successful, the Geneva Freeport has also been plagued by a series of scandals. This pattern took hold before the freeport made a decisive pivot to luxury services but has not abated since. Thus, in 1995, Italian and Swiss police raided the Geneva Freeport and found over 3000 invaluable artworks, stashed there by an international circle of antique smugglers (Felch and Frammolino 2011).²³ A few years later, in 2003, Swiss Customs uncovered 200 stolen ancient Egyptian artifacts, including two mummies, sarcophagi, masks and statues, on the premises. Some of the items had reportedly been painted in garish colors so they could be presented as cheap souvenirs (Segal 2012). In 2010, a Roman sarcophagus, pilfered from an archeological site in Turkey, was also discovered in the freeport. Most recently, in 2016 Roman and Etruscan artifacts looted from Italy were found in the freeport (EPRS 2018; Bernstein 2018). In other words, then, smuggling scandals and the trade of illegally sourced art have tarnished the image of the Geneva Freeport for decades.

20 For the offshore world as a whole the figure is even higher, at 25%.

21 This, in turn, is likely a function of rising wealth inequality and a growing pool of UHNWIs (World Inequality Report 2018; Piketty 2014). See Fuller et al. 2019 for an interesting discussion of the challenges of assessing wealth vs. income inequality.

22 [https://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20\(45\)/12490ZF_e.pdf](https://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20(45)/12490ZF_e.pdf). A 2018 report from the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament similarly concludes that it is commonly understood that these jurisdictions consider a freeport an addition to their attraction as a financial offshore (http://www.europarl.europa.eu/cmsdata/155721/EPRS_STUD_627114_Money%20laundering-FINAL.pdf)

23 An investigative journalist that has worked on art crime for decades notes that 'Medici [the ringleader of the smuggling circle] felt so safe in Geneva[s] freeport], that he kept extensive records and photographs of all the objects.'<https://www.swissinfo.ch/eng/free-port-problemclosing-in-on-the-archaeological-underworld/33088854>

Though of a different nature, the so-called ‘Bouvier affair’ also took a reputational toll. This scandal, which sent shock waves through the art world, erupted in 2015 when billionaire art collector Dmitry Rybolovlev sued ‘freeport king’ Yves Bouvier for fraud, claiming that he had sold him art at artificially inflated prices over the course of a decade. The margins Bouvier charged were very high indeed—Rybolovlev’s lawyers claim that Bouvier’s profit totaled over \$1 billion²⁴—but Bouvier has countered that Rybolovlev was under no pressure to purchase the works on offer and that the high mark ups were just a routine part of ‘a commercial game’ (Knight 2016). At the time of writing elements of the legal clash between the two men are ongoing. While it remains to be seen whether Bouvier’s methods will be found criminal, the case has underscored the opacity, information asymmetry, subjective valuations and potential for conflicts of interest that characterize the art world—all of which can be conducive to fraud and abuse.

In 2016, information contained in the Panama Papers then brought on another round of scandal. At its heart was a painting by renowned Italian expressionist Amadeo Modigliani, which Nazis stole from Jewish art dealer Oscar Stettiner during the Second World War. The painting resurfaced at a Christie’s auction in 1996, where it was bought for \$3.2 million by a company called International Art Center (IAC). In 2011, Stettiner’s heirs filed for restitution but hit a legal impasse since the ultimate beneficial ownership (UBO) of IAC could not be established. The company was rumored to belong to the Nahmad family of international art dealers but the family denied any connection. It was only five years after the case was first filed that the Panama Papers revealed that the company, which was registered by Panama law firm Mossack Fonseca, did in fact belong to the Nahmads and that the Modigliani had been stored in the Geneva Freeport (Bernstein 2016, 2017; EPRS 2018). This case highlighted the fact that artwork kept in the freeport could be registered through shell companies or other intermediaries, making it difficult to trace UBO. This is another known risk factor in fraud, money laundering and tax evasion (Nielson et al. 2014).

These scandals have been consequential for the Geneva Freeport in a variety of ways. One is that they have drawn attention, presumably very much unwanted, to an industry that thrives on confidentiality and anonymity. Thus, over the course of the last few years, a number of media outlets, including the New York Times, Economist, BBC, New Yorker, Süddeutsche Zeitung, Le Temps, Swissinfo, Le Figaro and L’Express have trained their critical focus on the Geneva Freeport.

International organization, governmental agencies and non-governmental organizations have also started paying heed. In a report

from 2010, the Financial Action Task Force (FATF), which sets global anti-money-laundering standards, concluded that free trade zones (FTZs), which include freeports, offer ‘opportunities for money laundering and the financing of terrorism (FATF/OECD 2010, p. 4).’ In 2014, the Swiss Federal Audit Office published a report on customs activities in Swiss freeports and OCWs. The SFAO noted that freeports could be staging grounds for tax evasion and money laundering. Moreover, that there was ‘a lack of awareness within the Confederation of the political and economic stakes’ and ‘reputational risk’ that could ‘make Switzerland the target of foreign fiscal and tax authorities (Swiss Federal Audit Office 2014, p. 21).’²⁵ A UNESCO report (2016) on freeports for art stressed that they could be used for illicit trafficking of cultural property.²⁶ The independent advocacy group Tax Justice Network has also added the presence of FTZs and freeports to the list indicators covered by its Financial Secrecy Index and began including the presence of freeports in its qualitative country reports.²⁷ The 2017 final report of the European Parliament’s Committee of Inquiry into Money laundering, tax avoidance and tax evasion (PANA) concluded that freeports ‘may constitute offshore storage facilities, enabling money laundering and untaxed trade in valuables’ (p. 11).²⁸ Most recently, the Directorate-General for Parliamentary Research Services of the Secretariat of the European Parliament published a report dedicated entirely to the risk of money laundering and tax evasion in freeports (EPRS 2018).

In some cases regulatory changes have followed in the wake of scandals and heightened scrutiny. Thus, following the discovery of stolen Egyptian artifacts in the Geneva Freeport in 2003, Switzerland decided to opt into the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Until then, it had relied on ‘good-faith’ purchaser rules that made it difficult to contest ownership of smuggled or stolen goods (author’s interview). In 2005, the Federal Government then embarked on a more fundamental overhaul of the legal framework governing Swiss freeports. This change to the customs code brought freeports into Swiss customs territory for the first time, revoking their historical extraterritorial status. The new laws also required freeports to start keeping inventories of ‘sensitive’ goods for the first time and gave customs the right to inspect inventories on request. Still, freeports retained access to the designer tax regime that lets them store goods without tax and duty payments. In 2016, further anti-money laundering measures were introduced, requiring official financial intermediaries for art transactions exceeding CHF 100,000, limiting anonymity and cash transactions, which are common in the art world. The new law, however, also offered an escape clause, which allowing buyers and sellers to stay anonymous and keep their transactions confidential, given that

24 Or, as Rybolovlev reportedly put it to Bouviers: ‘But, Yves, these markups are worth a Boeing.’ (<https://www.newyorker.com/magazine/2016/02/08/the-bouvier-affair>)

25 Author’s translation.

26 http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/2_FC_free_port_working_document_Final_EN_revclean.pdf

27 <https://www.financialsecrecyindex.com/introduction/fsi-2018-results>

28 http://www.europarl.europa.eu/cmsdata/134368/A8-0357_2017_EN.pdf

sellers take steps to ensure the legal origins of buyers' funds (Loi sur les douanes 2005).²⁹

In addition to this, at least two self-regulatory initiatives have emerged from within the Swiss art community, including one in which the Geneva Freeport is a founding member (The Responsible Art Market Initiative³⁰; Basel Institute of Governance³¹). There has also been a strategic change of leadership in the Geneva Freeport, aiming at reputational damage control and the freeport has changed some of its day-to-day practices in order to enhance security and surveillance (author's interviews).

Crucially, these reactions all share a definition of the problem at hand as one of money laundering, terrorist financing and smuggling of illegally sourced art, while there is little mention of taxation, even as much of the criticism has centered on the Geneva Freeport as a novel kind of tax haven. This mirrors early regulatory attention to more traditional tax havens, which also took a rather narrow view of criminality qua money laundering (Palan 2003). In fact, Swiss public authorities have remained almost entirely mum on the topic of tax evasion in Luxury Freeports. One exception is that the canton of Geneva conducted a study on the economic impact of the freeports that it owns. Reportedly, this study found that the tax losses for the economy of Geneva come to CHF 300 million a year and that 80% of freeports' customers were foreign nationals. Further results of the study, however, remain strictly confidential. Even the Swiss Federal Department of Finance has been denied access to it, in spite of numerous requests (Swiss Federal Audit Office 2014).

In spite of scandals and regulatory changes the Geneva Freeport continues to do brisk business and is reportedly operating at capacity, even after the 2014 extension of its facilities. Still, for actors that want to mimic its success, a number of lessons can be drawn from its tarnished reputation and the legitimacy challenges it has faced over the last few years. It is to the strategic emulation of the new generation of Luxury Freeports that the paper turns next, with a particular focus on the Luxembourgish Le Freeport, which has faced both regulatory constraints and reputational tests coming out of the gate.

Luxury Freeports 2.0: Le Freeport in Luxembourg

Over the course of the last few years new Luxury Freeports have opened up in Singapore, Monaco, Luxembourg, Beijing, Delaware and New York City. The same handful of actors has been behind

many of these endeavors. Most notably, 'Freeport King' Yves Bouvier has been intimately involved with a number of the new freeports. Building on his experience as the biggest private shareholder in the Geneva Freeport, he has been the driving force behind the Le Freeport brand, of which the freeports in Singapore and Luxembourg are branches.³² He has also acted as a consultant for the enormous state owned Beijing Freeport, which aims to cater to rapidly growing demand for art services among newly wealthy Chinese collectors.³³ The owners of the two North American Luxury Freeports have also taken direct inspiration from Bouvier's Le Freeport business model (Abrahamian 2018). The small Monaco Freeport is government owned and was part of public initiative emulate Geneva's success and develop business related to art, antiquities, jewelry and other luxury items in Monaco.

The new generation of Luxury Freeports is, then, very much an interconnected web, with Bouvier at the center. As a result, Bouvier's vision and the lessons he took from Geneva can be observed in many aspects of these new freeports. In what follows, this paper hones in on some of the strategic ways in which the newer freeports differ from the Genovese blueprint, all of which aim to legitimize, promote and mainstream this new form of offshore in the face of new challenges.

Bouvier's vision for the future of Luxury Freeports was one in which the worlds of high culture and wealth management would dovetail to cater to a growing pool of wealthy clients with discerning taste (Knight 2016). Part of executing this vision was to ensure that newer freeports looked less like warehouses than galleries or museums, embodying the aesthetics of the works they contained.

Having evolved from a traditional freeport model, the Geneva Freeport consists of a series of drab, functional and unremarkable storage units. Le Freeport Luxembourg, by contrast, is as glamorous as its Genovese counterpart is dreary. Designed by the Swiss Atelier d'Architecture 3BM3, the outside of Le Freeport is a modern take on a medieval fortress, imposing and austere. The disjointed shape of the building is a function of its cutting edge security infrastructure, including seismic detectors, infrared cameras and temperature and humidity controls.

The inside of the four-story building is more ostentatious. The style is futuristic brutalism with enormous concrete slabs meeting at jagged angles, cut through with glass elevator shafts and concrete

29 <https://www.admin.ch/opc/fr/classifiedcompilation/20030370/index.html#app1>. A representative of Swiss Customs responded to a request for comment for this paper by saying that Swiss Customs 'monitors the movement of goods, knows the stored goods and their owners and also provides information abroad within the framework of administrative and mutual assistance.' Whether information on goods kept in Swiss freeports is in fact being shared with other governments is, however, difficult to assess. What is more, to date inventory requirements are not retroactive and two experts interviewed for this paper remain skeptical that Swiss Customs has the institutional capacity and art expertise to carry out meaningful and comprehensive surveillance of goods kept in freeports.

30 <http://responsibleartmarket.org/>. On the topic of tax evasion an expert from the Responsible Art Market Initiative interviewed for this paper concluded that 'no, to my knowledge, taxation is not one of the big topics.'

31 https://www.baselgovernance.org/sites/collective.localhost/files/publications/aml_principles_art_trade_2018_1.pdf.

32 In Singapore ownership passes through one of Bouvier's companies, EurAsia SA.

33 For more on the Chinese art market see Helgadóttir forthcoming.

stairwells that connect the different levels of the building. A vast mural by Portuguese artist Alexandre Farto is etched into one of the sloping concrete walls lining the atrium. A glass-covered atrium compensates for a dearth of windows, with additional light coming from oversized panels of jewel-colored halogens, the work of American designer Johanna Grawunder.

The service infrastructure and expertise on offer at Le Freeport are equally top-of-the-line. A Deloitte publication that catalogs the myriad benefits of Le Freeport notes that ‘Luxembourg’s airport is a very convenient landing spot for private jets’ and that the freeport sits alongside the cargo center of the Luxembourg airport, with an internal road leading directly from the tarmac into the center of the building. There clients can access a range of services including tax and customs advisory, consultation on art monetization, private showrooms, storage rooms, a studio to photograph art pieces for sales and exhibition catalogues, art valuation, restoration, insurance brokerage, customs handling, crating, shipping and framing (Le Freeport Luxembourg Creates...2015 p. 3).³⁴

In keeping with Bouvier’s vision, the official opening of Le Freeport in September of 2014 was a glamorous and star-studded affair, overseen by the Grand Duke of Luxembourg and attended by the deputy Prime Minister, the Ministers of Finance and Culture, art dealers, auctioneers, collectors and bankers from around Europe. As part of the festivities, the Luxembourg Philharmonic played a ‘Freeport’ overture, composed specifically for the occasion (Adam 2018). The opening, in other words, was akin to what one might expect at the launch of a prestigious museum, not a storage facility with special legal exemptions.

The all-encompassing luxury experience that Le Freeport strives to provide for its clients is in line with changing emphases in the broader wealth management industry, where there has been a turn to what is sometimes called ‘holistic wealth management’—an intensely individualized approach that takes multiple facets of wealth and social satisfaction into account, including the juncture between investing in and deriving pleasure from the ownership of luxury goods such as art. Deloitte, one of the so-called ‘big four’ accounting and auditing firms, has been at the forefront of this development. The firm has made Luxembourg the center for its new ‘Art and Finance’ initiative, which takes Le Freeport and the tax benefits it offers as a core element of its business model. It is, moreover, a business model that has found a receptive audience among wealth management professionals. Thus, Deloitte’s 2017 annual report for the Art and Finance initiative notes that:

When we launched the inaugural Art & Finance report six years ago, one third of the wealth managers surveyed said they were aware and followed the developments linked to art as an asset class and issues around art and wealth management. This year, close to 60 percent of the wealth managers said the same. However, it’s not only awareness that has increased over the last

years—we are also seeing real action, with 64 percent of wealth managers saying they were actively offering services related to art and collectibles. The most recent survey shows an increase from 78 percent in 2016 to 88 percent in 2017 of wealth managers saying that they think art and collectibles should be included as part of the wealth management offering, the highest registered reading since the launch of the survey in 2011 (p. 16).

In Luxembourg, both the Le Freeport and Deloitte’s Art and Finance initiative have also been endorsed at the highest levels of government, where they are framed as an important step towards diversifying the financial economy of the country. Thus, for Luxembourg’s former Deputy Prime Minister and Minister of Economy, Etienne Schneider, ‘Le Freeport Luxembourg will significantly contribute to the diversification of the Luxembourg economy, enriching and complementing both its logistics platform and its financial center. Similarly, Pierre Gramegna, Luxembourg’s Minister of Finance has stated that, ‘[t]he main reason why it was important and wise to go in that direction is that Le Freeport blends very well with the Luxembourg landscape. One of the key priorities of the government is to continue to diversify our financial sector (Le Freeport Luxembourg Creates...2015 p. 3).’

This is not just talk: Luxembourgish policymaking also reflects these priorities. Thus, in 2011, the Luxembourg parliament made amendments to its customs law specifically to accommodate the Le Freeport business model.³⁵ More recently the parliament passed a law allowing HNWI that want to invest in Luxembourg to benefit from a special three-year visa. Deloitte finds that ‘[t]his new measure is particularly favorable to HNWI collecting artworks or other high-value goods, and seeks to encourage them to view Luxembourg as their gateway to the art world (Deloitte Art and Finance Report 2017, p. 95).’

Other new Luxury Freeports have followed Bouvier’s blueprint, tapping into a combination of the cultural cachet and aesthetics of the art world and the expertise of the wealth management industry, while also relying on government support or sponsorship. This strategy got off to an auspicious start, as exemplified by the glittering success of Le Freeport’s opening in Luxembourg. However, the fact that Bouvier himself has been so central to the diffusion of the Luxury Freeport model has also made these new offshores vulnerable to his travails. The Bouvier affair broke in 2015, just a few months after the grand opening of Le Freeport in Luxembourg. The new freeport, where every detail had been overseen by Bouvier (Knight 2016), was immediately tainted by association (EPRS 2018).

In response, both Luxembourgish authorities and Le Freeport’s management took pre-emptive steps to distance themselves from the scandal. As was the case in Geneva, however, these efforts centered on a definition of the problem as one of money laundering and illicit trafficking rather than one of taxation. Thus, in

34 <https://www2.deloitte.com/lu/en/pages/art-finance/articles/freeport-new-perspectives-luxembourg-economy.html>

35 https://www.cc.lu/uploads/media/Presentation_8_David_Arendt_Freeport.pdf

the immediate wake of the scandal the government carried out an analysis of money laundering risks in Le Freeport and then, in July of 2015, went on to implement elements of the EU's fifth Anti-Money Laundering Directive (AMLD5), five years ahead of time (the directive will take full force in 2020).³⁶

The new directive broadens the scope of earlier directives to encompass a number of new actors, including freeports and art traders. More specifically, under AMLD5 they are treated as 'non-financial obliged entities'. This means that they are required to report suspicious activity to national financial intelligence units, to carry out customer due diligence and to keep records of UBO. This means that freeport customers and art buyers can no longer hide ownership through the use of intermediaries such as shell companies, trusts, legal representatives or galleries.

While there have been some reports of Le Freeport losing customers as a result of AMLD5, the freeport's management has publicly embraced the directive, framing the early implementation of anti-money laundering measures in Luxembourg as both a competitive advantage and a safeguard against illicit activity, setting Luxembourg apart from scandal-ridden Geneva. For example, David Arendt, the former director of Le Freeport Luxembourg stated that Le Freeport is 'going beyond European customs requirements and is a real model. On a regulatory perspective in the global art market, we are already 5 to 10 years ahead' (Le Freeport Luxembourg Creates...2015 p. 3). Similarly, current director Philippe Dauvergne has made the case that:

... in the world of free trade zones, the transparency of the Luxembourg system is unparalleled ...One wonders why someone trying to conceal goods or transaction would run the risk of storing valuables in a free trade zone with record levels of customs control and strict enforcement of anti-money laundering regulations... Open Customs Warehouses in London, Paris, Brussels and Cologne offer larger facilities and are not subject to any anti-money laundering regulations. The Ports Francs et Entréports de Genève also rents surfaces to businesses and individuals without carrying out anti-money laundering measures. Having the choice between solutions with little or no control and the Luxembourg Freeport, which is subject to strict state surveillance, it seems doubtful that criminals would opt for Luxembourg (Dauvergne 2018).³⁷

In addition to embracing anti-money laundering measures, Le Freeport Luxembourg has also taken concrete steps to counter the illicit trafficking of art. This includes requiring that customs staff at Le Freeport go through training in art valuation with the Musée national d'Histoire et d'Art in Luxembourg (EPRS 2018).

At first glance it may seem like these changes should fundamentally undermine the Luxury Freeport model. However, since AMLD5 does not classify freeports as 'financial institutions' (but rather as obligated 'non-financial institutions') it does not require them to engage in automatic exchange of information between tax authorities as laid out under the EU's DAC6, the OECD's Common Reporting Standards (CRS) or the US Foreign Account Tax Compliance Act (FATCA). Moreover, 'fishing' in information from non-financial entities is expressly prohibited. Under AMLD5, information from freeports will therefore only be exchanged upon request and where there is prior suspicion of misdeeds. Since confidentiality and discretion is key to the art trade, the effects of the new legislation might be very limited in practice. They will also be nearly impossible to assess as freeports are under no obligation to report on whatever information they do exchange.

Crucially, even as Le Freeport takes a pro-active stance against money laundering and smuggling, it also continues to vaunt the tax benefits it offers to customers. Indeed, Dauvergne's official statements reflect a clear awareness that the freeport's designer tax regime is its key asset and that strict compliance on other fronts is essential to protect that asset. Thus, he has noted that Le Freeport is very much reliant on its 'revocable' legal exemptions and that in light of this '[t]he interest of Le Freeport is first and foremost to follow laws and regulations to the letter, in order to preserve its special legal status.'³⁸

This strategy hinges on a clear distinction between money laundering on the one hand and tax avoidance on the other. Yet this distinction may soon become difficult to maintain as more regulatory and surveillance bodies acknowledge the overlap between tax dodging and money laundering. Crucially, in 2017 the EU made tax evasion and tax fraud predicate crimes for money laundering (Directive (EU) 2015/849), following 2012 recommendations from the FATF.³⁹ What is more, some actors, notably German MEP Wolf Klinz, are beginning to openly ask why Luxury Freeports, which unlike their traditional predecessors have low stock turnover and no

36 [http://www.europarl.europa.eu/cmsdata/124822/A\(2017\)7777_Gramegna%20Reply.pdf](http://www.europarl.europa.eu/cmsdata/124822/A(2017)7777_Gramegna%20Reply.pdf); EPRS 2018; On June 19th, 2018, the fifth EU Anti-Money Laundering Directive (AMLD 5) was published in the official journal of the European Union. The AMLD5 modifies the fourth Anti-Money Laundering Directive (AMLD4) released only in 2015. The EU Commission proposed the revised AMLD in July 2016 as part of its Action Plan against terrorism announced in February 2016, after the attacks in Paris and Brussels, and as a reaction to the Panama Papers published in April 2016.

37 Author's translation of Dauvergne's letter declining to attend a hearing of the EU's PANA committee: <http://www.europarl.europa.eu/cmsdata/155705/6%20-%20007%20-%20Letter%20and%20contribution%20from%20Philippe%20Dauvergne%20freeport%20Lux.pdf>.

38 Author's translation of Dauvergne's letter declining to attend a hearing of the EU's PANA committee: <http://www.europarl.europa.eu/cmsdata/155705/6%20-%20007%20-%20Letter%20and%20contribution%20from%20Philippe%20Dauvergne%20freeport%20Lux.pdf>.

39 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2015_141_R_0003&from=ES

clear role in GVCs,⁴⁰ should be granted any special tax provisions at all (Shaw 2019a). If this critique makes it way into policy, it could put an end to the Luxury Freeport model. However, for now this seems an unlikely outcome. In response to Klinz's inquiries about Le Freeport Luxembourg, the European commissioner for economic and financial affairs has reinforced the distinction between tax avoidance and criminality that the Luxury Freeport model relies on, stating that they are 'useful to simplify commercial operations' and that there is no evidence that they 'are systematically used to commit fraud' (Shaw 2019b).

Conclusion

This paper introduced the concept Luxury Freeport to describe a novel form of non-financial offshore where art and other material goods can be stored indefinitely without tax- and duty-payments. It makes the case that the recent emergence and diffusion of this phenomenon can be traced back to meso-level developments within the broader ecosystem of offshores and tax havens. More specifically, the paper makes the case that the Luxury Freeport model, which evolved from traditional freeports, was spurred by the combination of competition from Open Customs Warehouses and the quest for alternative investment outlets in the wake of an international clampdown on banking secrecy.

While Luxury Freeports have emerged alongside a number of global financial hubs, the paper stresses that the diffusion of this novel form of offshore has not been automatic but spearheaded by key actors with a strategic vision of how to promote and mainstream their business model, even as traditional offshores and the secrecy practices that maintain them have come under attack.

This has involved tapping into the cachet of the art world and assuming its aesthetics—with newer freeports looking like museums of contemporary art—and enrolling the expertise and services of the wealth management industry, all while cooperating closely with regulatory authorities in anti-money laundering efforts. So far this strategy has proven successful, with Luxury Freeports operating in a variety of locations internationally and current AML measures—even in their most far-reaching iterations—doing little to undermine their business model.

However, the legitimacy of Luxury Freeports hinges on a differentiation between money laundering and tax avoidance that is coming under pressure as more actors come to define tax fraud as a predicate crime for money laundering. It also skirts the question of why suspension of VAT, which was originally meant to promote trade, should be extended to the quasi-permanent storage of luxury objects. If criticism of this kind comes to be reflected in policy, i.e. by defining Luxury Freeports as 'financial institutions' that are subject to automatic information exchange between tax authorities, this could spell an end to this new kind of offshore. This would likely set off another round of meso-level spillover effects in the offshore world, as wealth currently stored in Luxury Freeports would seek new havens. It could also have a serious impact trade in high-end art, which is closely entangled with the rapid growth in Luxury Offshores. However, for the time being at least, this seems an unlikely outcome.

40 for the contrary view see Ditzig et al. 2016.

References

- Abrahamian, A. A. 2018. Tax-Free Storage Wars. Retrieved April 5, 2019, from Longreads website: <https://longreads.com/2018/05/29/tax-free-storage-wars/>
- Adam, G. 2018. Dark Side of the Boom: The Excesses of the Art Market in the 21st Century. Lund Humphries.
- Adam, M. G. 2014. Big Bucks: The Explosion of the Art Market in the 21st Century. Ashgate Publishing, Ltd.
- Allen, J., & Cochrane, A. 2007. Beyond the Territorial Fix: Regional Assemblages, Politics and Power. *Regional Studies*, 41(9), 1161–1175.
- Amin, A. 2004. Regions Unbound: Towards a new Politics of Place. *Geografiska Annaler: Series B, Human Geography*, 86(1), 33–44.
- Art & Finance report - Deloitte. Retrieved March 30, 2019, from <https://www2.deloitte.com/content/dam/Deloitte/at/Documents/finance/art-and-finance-report-2017.pdf>
- Baker, A. 2013. The New Political Economy of the Macropprudential Ideational Shift. *New Political Economy*, 18(1), 112–139.
- Beaverstock, J. V. 2001. Comparing London and Frankfurt as world cities: a relational study of contemporary urban change. Anglo-German Foundation.
- Beaverstock, J. V., Hall, S., & Wainwright, T. 2013. Servicing the Super-Rich: New Financial Elites and the Rise of the Private Wealth Management Retail Ecology. *Regional Studies*, 47(6), 834–849.
- Beaverstock, J. V., Hoyler, M., Pain, K., & Taylor, P. J. 2005. Demythifying the Euro in European Financial Centre Relations: London and Frankfurt, 2000–2001. *Journal of Contemporary European Studies*, 13(2), 143–157.
- Beaverstock, J.V. 2007. World city networks from below: International mobility and inter-city relations in the global investment banking industry. In: Taylor, P.J., Derudder, B., Saey, P. and Witlox, F. (eds.) *Cities in Globalization: Practices, Policies, Theories*. London: Routledge, 52–71.
- Beaverstock, J., Hoyler, M., Pain, K., & Taylor, P. 2018. Comparing London and Frankfurt as world cities: A relational study of contemporary urban change. In X. Ren, & R. Keil (Eds.), *The Globalizing Cities Reader* (pp. 154–160). Oxford: Routledge.
- Bernstein, J. 2017. *Secrecy World: Inside the Panama Papers Investigation of Illicit Money Networks and the Global Elite*. Henry Holt and Company.
- Bernstein, J. 2016. The Art of Secrecy. Retrieved April 5, 2019, from ICIJ website: <https://www.icij.org/investigations/panama-papers/20160407-art-secrecy-offshore/>
- Castells, M. 1996. *The Rise of the Network Society*. Blackwell.
- Christensen, J., Shaxson, N., & Wigan, D. 2016. The Finance Curse: Britain and the World Economy. *The British Journal of Politics and International Relations*, 18(1), 255–269.
- Cobb, S. C. 2001. Globalization in a small island context: creating and marketing competitive advantage for offshore financial services. *Geografiska Annaler: Series B, Human Geography*, 83(4), 161–174.
- Cobb, S. C. 2016. The Role of Corporate, Professional, and Personal Networks in the Provision of Offshore Financial Services: Environment and Planning A.
- Ditzig, K., Lynch, R., & Ding, D. 2016. Dynamic global infrastructure: The freeport as value chain. *Finance and Society*, 2(2), 180–188.
- European Parliament, European Parliamentary Research Service, & Ex-Post Evaluation Unit. (2018). Money laundering and tax evasion risks in free ports: study at the request of the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3). Retrieved from <http://dx.publications.europa.eu/10.2861/092981>
- Evera, S. V. 1997. *Guide to Methods for Students of Political Science* (1 edition). Ithaca: Cornell University Press.
- Eyal, G. 2013. For a Sociology of Expertise: The Social Origins of the Autism Epidemic. *American Journal of Sociology*, 118(4), 863–907.
- Faulconbridge, J. R. 2004. London and Frankfurt in Europe's evolving financial centre network. *Area*, 36(3), 235–244.
- Felch, J., & Frammolino, R. 2011. Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum. HMH.
- Financial Action Task Force. 2019. Money Laundering vulnerabilities of Free Trade Zones. (n.d.). Retrieved April 5, 2019, from <http://www.fatf-gafi.org/publications/methodsandtrends/documents/moneylaunderingvulnerabilitiesoffreetradezones.html>
- French, S., Leyshon, A., & Wainwright, T. 2011. Financializing space, spacing financialization. *Progress in Human Geography*, 35(6), 798–819.
- Fuller, G. W., Johnston, A., & Regan, A. 2019. Housing prices and wealth inequality in Western Europe. *West European Politics*, 0(0), 1–24.
- Gapper, J. 2014. "Modern Art Auctions Are as Baffling as the Paintings." *Financial Times*, May 7. <http://www.ft.com/intl/cms/s/2/1d20e4b6-d47c-11e3-bf4e-00144feabdc0.html#ax-zz3btKx8bSi>.
- Genschel, P., & Schwarz, P. 2011. Tax competition: a literature review. *Socio-Economic Review*, 9(2), 339–370.
- Gilbert, E. 2005. Common cents: situating money in time and place. *Economy and Society*, 34(3), 357–388.
- Goetzmann, W. N., Renneboog, L., and Spaenjers, C. 2011. "Art and Money." *American Economic Review* 101 (3): 222–26.
- Haberly, D., & Wójcik, D. 2017. Earth Incorporated: Centralization and Variegation in the Global Company Network. *Economic Geography*, 93(3), 241–266.

- Hall, S. 2012. Geographies of money and finance II: Financialization and financial subjects. *Progress in Human Geography*, 36(3), 403–411.
- Harrington, B. (2016). *Capital Without Borders*. Harvard University Press.
- Helgadóttir, O. Forthcoming. Art in Seabrooke, L. And D. Wigan (Eds.) *Governing Global Value Chains*. Oxford University Press
- Hudson, A. C. 1998. Placing trust, trusting place: on the social construction of offshore financial centres. *Political Geography*, 17(8), 915–937.
- Hudson, R. 2007. Regions and Regional Uneven Development Forever? Some Reflective Comments upon Theory and Practice. *Regional Studies*, 41(9), 1149–1160.
- Kato, J. 2010. *Regressive Taxation and the Welfare State: Path Dependence and Policy Diffusion*. Cambridge University Press.
- Knight, S. 2016. The Art-World Insider Who Went Too Far, The New Yorker. Retrieved April 5, 2019, from <https://www.newyorker.com/magazine/2016/02/08/the-bouvier-affair>
- Le Freeport - New perspectives for the Luxembourg economy | Deloitte Luxembourg | Art & Finance | Inside article. (n.d.). Retrieved April 5, 2019, from Deloitte Luxembourg website: <https://www2.deloitte.com/lu/en/pages/art-finance/articles/free-port-new-perspectives-luxembourg-economy.html>
- Lo, V., Grote, M. H., & Grote, M. H. 2002. Where traders go when stock exchanges go virtual – concentration, dissemination or persistence?
- Mahoney, J. 2012. The Logic of Process Tracing Tests in the Social Sciences. *Sociological Methods & Research*, 41(4), 570–597.
- Maurer, B. 2008. Re-Regulating Offshore Finance? *Geography Compass*, 2(1), 155–175.
- Maurer, Bill. 2000. *Recharting the Caribbean: Land, Law, and Citizenship in the British Virgin Islands*. University of Michigan Press.
- Maurer, Bill. 2005. Due Diligence and “Reasonable Man,” Offshore. *Cultural Anthropology*, 20(4), 474–505.
- McAndrew, C. 2017. TEFAF Art Market Report. Retrieved from <http://1uyxqn3lzdsa2ytyzj1asxmmmpt.wpengine.netdna-cdn.com/wp-content/uploads/2017/03/TEFAF-Art-Market-Report-20173.pdf>
- Muellerleile, C. 2013. Turning Financial Markets inside Out: Polanyi, Performativity and Disembeddedness. *Environment and Planning A: Economy and Space*, 45(7), 1625–1642.
- Palan, R. 1998. Trying to Have Your Cake and Eating It: How and Why the State System Has Created Offshore. *International Studies Quarterly*, 42(4), 625–643.
- Palan, R. 2006. *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*. Cornell University Press.
- Palan, R., Murphy, R., & Chavagneux, C. 2010. *Tax Havens: How Globalization Really Works*.
- Picciotto, S. 1992. *International Business Taxation: A Study in the Internationalization of Business Regulation*. Quorum Books.
- Picciotto, S. 1999. “Offshore: The State as Legal Fiction.” In *Offshore Finance Centres and Tax Havens*, edited by Mark P. Hampton and Jason P. Abbott, 43–79. West Lafayette: Ichor.
- Pike, A., & Pollard, J. 2010. Economic Geographies of Financialization. *Economic Geography*, 86(1), 29–51.
- Piketty, T. 2014. *Capital in the Twenty-First Century*. Harvard University Press.
- Pollard, J. S. 2007. Making Money, (Re)Making Firms: Microbusiness Financial Networks in Birmingham’s Jewellery Quarter. *Environment and Planning A: Economy and Space*, 39(2), 378–397.
- Rawlings, G. 2005. Mobile people, mobile capital and tax neutrality: Sustaining a market for Offshore Finance Centres. *Accounting Forum*, 29(3), 289–310.
- Roth, M. 2015. „Wir betreten den Kunstmarkt“: Geldwäscherei / Zollfreilager – ein zu diskretes Geschäft? / Interessenkonflikte, Manipulationen und Preisabsprachen (1st ed.). Zürich St. Gallen: Dike Verlag Zürich.
- Sassen, S. 2001. *The Global City: New York, London, Tokyo*. Princeton University Press.
- Schenk, A., Thuronyi, V., & Cui, W. 2015. *Value Added Tax*. Cambridge University Press.
- Schrager, A. 2015. “High-End Art Is One of the Most Manipulated Markets in the World.” Quartz. Accessed June 2. <http://qz.com/103091/high-end-art-is-one-of-the-most-manipulated-markets-in-the-world/>.
- Seabrooke, L., & Henriksen, L. F. 2017. *Professional Networks in Transnational Governance*. Cambridge University Press.
- Seabrooke, L., & Wigan, D. 2017. The governance of global wealth chains. *Review of International Political Economy*, 24(1), 1–29.
- Segal, D. 2012. “Swiss Freeports Are Home for a Growing Treasury of Art.” The New York Times, July 21. <http://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html>
- Sharman, J. 2010. Offshore and the new international political economy. *Review of International Political Economy*, 17(1), 1–19.
- Sharman, J. C. 2012. Canaries in the Coal Mine: Tax Havens, the Decline of the West and the Rise of the Rest. *New Political Economy*, 17(4), 493–513.
- Sharman, Jason Campbell. 2006. *Havens in a Storm: The Struggle for Global Tax Regulation*. Cornell University Press.
- Shaw, A. 2019a. European Commission president Jean-Claude Juncker must close tax loopholes at Luxembourg freeport, MEP says. (n.d.). Retrieved April 5, 2019, from <http://theartnewspaper.com/news/european-commission-president-jean-claude-juncker-must-close-tax-loopholes-at-luxembourg-freeport-mep-says>
- Shaw, A. 2019b. Jean-Claude Juncker dismisses claims that free-

ports are 'systematically used to commit fraud.' (n.d.). Retrieved April 5, 2019, from <http://theartnewspaper.com/news/jean-claude-juncker-dismisses-claims-that-freeports-are-systematically-used-to-commit-fraud>

Shaxson, N. 2011. *Treasure Islands: Tax Havens and the Men who Stole the World*. Bodley Head.

Swank, D., & Steinmo, S. 2002. The New Political Economy of Taxation in Advanced Capitalist Democracies. *American Journal of Political Science*, 46(3), 642–655.

Swiss Federal Audit Office. 2014 Ports francs et entrepôts douaniers ouverts, une stratégie est indispensable pour réduire les risques - Eidgenössische Finanzkontrolle. (n.d.). Retrieved March 30, 2019, from <https://www.efk.admin.ch/fr/publications/communication-institutionnelle/communiqués-de-presse/1799-zollfrei-lager-und-offene-zolllager-eine-strategie-zur-minderung-der-risiken-ist-zu-verabschieden-f.html>

Tsingou, E. (2010). Global financial governance and the developing anti-money laundering regime: What lessons for International Political Economy? *International Politics*, 47(6), 617–637.

Velthuis, O. 2007. *Talking Prices -- Symbolic Meanings of Prices on the Market for Contemporary Art*. Princeton: Princeton University Press.

Wilensky, H. L. 2002. *Rich Democracies: Political Economy, Public Policy, and Performance*. University of California Press.

Wójcik, D. 2009. Geography of Stock Markets. *Geography Compass*, 3(4), 1499–1514.

Wójcik, D. 2013. The Dark Side of NY–LON: Financial Centres and the Global Financial Crisis. *Urban Studies*, 50(13), 2736–2752.

Wójcik, D. 2018. *The Global Financial Networks*. The New Oxford Handbook of Economic Geography.

Zaloom, C. 2006. *Out of the Pits: Traders and Technology from Chicago to London*. University of Chicago Press.

Zarobell, J. 2017. *Art and the Global Economy*. Univ of California Press.

Zucman, G. 2013. The Missing Wealth of Nations: Are Europe and the U.S. net Debtors or net Creditors?*. *The Quarterly Journal of Economics*, 128(3), 1321–1364.

Zucman, G. (2015). *The Hidden Wealth of Nations: The Scourge of Tax Havens*. University of Chicago Press.